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THE ADMINISTRATION OF JUSTICE AND THE HUMAN RIGHTS OF DETAINEES

Report of the Secretary-General prepared pursuant to Sub-Commission resolution 1994/33

Addendum

The present document contains information submitted by the Governments of China, Malta, Mexico, Uruguay and Yugoslavia received after the preparation of documents E/CN.4/Sub.2/1995/17 and Add.1.

GE.95-13152 (E)

China

[5 May 1995]
[Original: Chinese]

A.

1. China considers that persons whose human rights and fundamental freedoms are violated are entitled to compensation as established by law. International human rights instruments put forward a good many views on the question of compensation for victims of human rights violations, which are instructive on the subjects of the promotion and protection of human rights and international cooperation in the field of human rights. The countries concerned should take care to step up their research and devise laws and regulations on the question of compensation. As we inhabit a rich and varied world in which different countries and regions have dissimilar political systems, levels of development, histories and cultural backgrounds, it is natural that there should also be divergencies in their styles and approaches to the promotion of human rights. While emphasizing the universality of human rights, therefore, one should not overlook the distinctive characteristics of countries and regions - and as regards legislation and practice in the matter of compensation, this is likewise true. The Chinese Government believes that each country should establish it own laws on forms of compensation, compensation procedures and mechanisms, and its own specific ways of applying them, in the light of domestic circumstances.

B.

2. China consistently respects, promotes and protects its citizens' human rights and fundamental freedoms, and it abides conscientiously by the relevant international human rights agreements. It has been working hard for years on the law and practice of compensation, with notable success. The Constitution says: "Citizens who suffer losses through infringement of their civic rights by any State organ or functionary have the right to compensation in accordance with the law."

3. The Administrative Proceedings Act was published and took effect in October 1989. It states that Chinese citizens, bodies corporate and other organizations are entitled to institute administrative proceedings against any governmental agency or employee thereof whose actions infringe their lawful rights and interests.

4. In May 1994, China promulgated a State Compensation Act. This, on the basis of the relevant provisions of the Administrative Proceedings Act, laid down specific provisions governing the scope, procedure and criteria for administrative compensation and added material on criminal compensation, thereby establishing a fairly complete State compensation system. This is an important system following on from the administrative proceedings system and the administrative appeals system. It reinforces the construction of a clean

and honest administration, not only as regards the right of citizens, bodies corporate and other organizations to receive State compensation in accordance with the law, but also as regards the proper discharge of their functions by administrative bodies and their employees. It protects social order and the intimate links between government and the general public, and safeguards and promotes the construction and improvement of a socialist market system, all of which are immensely important. The State Compensation Act took effect in January 1995.

5. In January 1995, the State Council promulgated "Methods for the handling of the costs of State compensation", setting forth specific provisions governing the sources of and management of monies disbursed in compensation, guaranteeing the right of citizens, bodies corporate and other organizations to receive State compensation in accordance with the law and prompting State bodies to discharge their functions properly. In December 1994, the Supreme People's Court had served notice on intermediate and higher-level courts that they must establish compensation committees and the requisite functional machinery by the end of January 1995 to be able to exercise their legal authority to hand down final decisions on criminal compensation.

6. Enforcement of the State Compensation Act is turning State compensation from dependable policy into dependable law, improving the State compensation system and guaranteeing compliance with the Constitution. All China's administrative organs, judicial bodies, procuratorial organs and related institutions are now busy publicizing the Act and establishing it universally. Simultaneously, the Act is being earnestly studied by Chinese citizens, bodies corporate and other organizations so that they will understand the scope of State compensation and the procedures for applying it, and be well equipped to invoke the Act in defence of their own lawful rights and interests.

Malta

[6 June 1995]
[Original: English]

1. The Constitution of Malta provides for redress for any violations of fundamental rights and freedom. In fact, any individual whose fundamental rights have been infringed can file an application before the First Hall of the Civil Court for a hearing about his allegations. The Courts have made awards both for real and for moral damages. The individual can also appeal to the Constitutional Court if the First Hall of the Civil Court finds that the allegation of the violation is unfounded.

2. As to any right, claimed under the law, to the rehabilitation of victims of grave violations of human rights, the need has not so far arisen because Malta's track record shows that human rights have never been violated on such a serious scale in Malta.

Mexico

[18 July 1995]
[Original: Spanish]

The Government of Mexico submitted a copy of the Decree of 10 January 1994 of the Congress of the United Mexican States promulgated by the Executive,* which amends, supplements and repeals various provisions in national legislation concerning compensation for material and moral injury caused to victims of violations of human rights.

Uruguay

[13 June 1995]
[Original: Spanish]

1. The Uruguayan Constitution regulates the system of non-contractual liability resulting from injury caused to individuals by representatives of the State. In article 25 it provides that "The State, the departmental governments, the autonomous entities, the decentralized services, and in general any agency of the State, shall be civilly liable for injury caused to third parties, in the performance of public services, entrusted to their action or direction". Article 26 stipulates that "Whenever the injury has been caused by their officials, in the performance of their duties or by reason of such performance, in the event they have been guilty of gross negligence or fraud, the corresponding public agency may reclaim from them whatever has been paid as compensation".

2. These constitutional provisions were the normative foundation for the compensation of victims of violations of human rights in our country. Numerous Uruguayan citizens whose fundamental rights had been violated by representatives of the State during the period of de facto government received compensation. The State, through the Ministry of National Defence, reached an agreement with the injured persons on the amount of the compensation.

3. As regards the restitution of property, Act No. 15.737 of 8 March 1985 and its Regulatory Decree 256/985 of 27 June 1985 provided for the restitution of property that had been confiscated during the period of the military dictatorship. This measure was supplemented by the implementation of compensation mechanisms for property which for some reason could not be returned.

4. The same objective was sought by Act No. 15.783, known as the "Reinstatement Act", which provided for the return to office of all non-military public officials who had been removed from office for political reasons between 1973 and 1985. All the measures adopted constitute the framework for the Uruguayan State's acceptance of the legitimate right of victims of serious violations of human rights and fundamental freedoms to restitution, compensation and rehabilitation.

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* Available for consultation in the files of the secretariat.

Yugoslavia

[13 July 1995]
[Original: English]

1. The Federal Republic of Yugoslavia is consistent in observing through the mechanism of its legal system and in practice the constitutional principle of the freedoms and equality of all its citizens without distinction of any kind. Any incitement to and provocation of national, racial, religious or other inequality is against the Constitution and punishable under the Yugoslav laws.

2. The activities of political, trade union and other organizations aimed at violating the guaranteed freedoms and rights of man and citizen or inciting to national, racial, religious and other intolerance or hatred is sanctioned by the Constitution of the Federal Republic of Yugoslavia and the constitutions of its constituent Republics.

3. The organizations or associations whose programmes or statutes contain goals aimed at violating the guaranteed freedoms and rights of man and citizen, and/or inciting to national, religious, racial or any other intolerance or hatred cannot be registered as political organizations or associations of citizens. If such goals are proclaimed after their establishment and registration, such organizations or associations shall be banned. Proceedings relating to the banning of political parties and associations of citizens are conducted before the Federal Constitutional Court, and/or before the constitutional courts of the constituent Republics, and are instituted ex officio by the State agency concerned with the registration of political parties and associations of citizens or by the competent public prosecutor.

4. The Constitution of the Federal Republic of Yugoslavia elaborates in detail provisions relating to the status of national minorities in accordance with international law.

5. The Federal Republic of Yugoslavia recognizes and guarantees the rights of national minorities to the preservation, development and expression of their ethnic, cultural, linguistic and any other peculiarities, as well as to the use of national symbols in accordance with international law. The members of minorities enjoy the right to free expression of their national identity and culture and the right to their own language and alphabet. In the areas where national minorities live in larger numbers their language and alphabet are in official use and their members enjoy the right to education and public information in their own language. They also have the right to establish their separate cultural organizations and associations, which are financed on a voluntary basis and may be supported by the State.

6. Under the Constitution of the Federal Republic of Yugoslavia, the members of national minorities enjoy the right to the establishment and unhampered development of mutual relations both in the Federal Republic of Yugoslavia and outside its borders with the members of their nation, as well as to participate in the work of international non-governmental organizations. No

restrictions may be placed on the exercise of this right other than those which may be detrimental to the Federal Republic of Yugoslavia or some of its constituent Republics.

7. The freedoms and rights of man and citizen, including the specific freedoms and rights guaranteed by the Constitution of the Federal Republic of Yugoslavia and the constitutions of its constituent Republics, are exercised on the basis of these Constitutions, however, in the cases specifically listed in these documents, the manner in which these rights are exercised may be regulated by law. For example, the right to the use of one's own language and alphabet and the right to education in one's own language are more specifically defined in a separate law. The mechanisms of monitoring and supervising the exercise of the freedoms and rights are assured by the Yugoslav federal legislative and executive organs of power and those of its constituent Republics.

8. The Federal Republic of Yugoslavia fulfils all its obligations under the International Convention on the Suppression and Punishment of the Crime of Apartheid, which it ratified in 1975. Fulfilling the obligations under the Convention, the Criminal Code of the Federal Republic of Yugoslavia prescribes the penalty of from six months to five years in prison for the criminal act of persecution of an organization or individual for supporting equality of people.

9. With respect to the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide, the Criminal Code of the Federal Republic of Yugoslavia defines the crime of genocide (art. 141). This crime consists of premeditated and planned actions committed with intent to destroy, in whole or in part, the members of any ethnic, racial or religious group. A sentence of from 5 to 20 years in prison is prescribed.

10. The Constitutional principle that all citizens of the Federal Republic of Yugoslavia are equal and free irrespective of their peculiarities or personal status is ensured within the framework of criminal law, i.e. the Criminal Code of the Federal Republic of Yugoslavia and the criminal laws of its constituent Republics, which provide for the punishment of anyone committing the criminal act of violation of the right of citizens to equality.

11. Every person is entitled to equal protection of his rights in a legally prescribed procedure and everyone is guaranteed the right of appeal or resort to other legal remedies against a decision which infringes a right or legally founded interest (art. 26 of the Constitution of the Federal Republic of Yugoslavia).

12. The Constitution of the Federal Republic of Yugoslavia guarantees respect for the human person and dignity in criminal and all other proceedings in the event of deprivation or restriction of liberty, as well as during the serving of a prison sentence.

13. Furthermore, the freedom of movement and residence of citizens is supplemented by the right to leave and return to the Federal Republic of Yugoslavia. The personal freedom of religion is ensured through the freedom of public or private profession of religion and performance of religious rites

and in particular by the right not to reveal one's religious belief. This group of freedoms and rights also includes the provision concerning the protection of the secrecy of personal data and the right of an individual to have access to his personal data.

14. The use of force against a person deprived of liberty or a person whose liberty has been restricted, as well as any extortion of a confession or statement, are prohibited and punishable. No one may be subjected to torture and to degrading treatment or punishment. Medical and other scientific experimentation may not be carried out on an individual without his consent (art. 25, Constitution of the Federal Republic of Yugoslavia).

15. Regarding respect for the human person and dignity, the Criminal Code of the Federal Republic of Yugoslavia and the criminal laws of its constituent Republics define as a criminal act any maltreatment in the performance of official duty.

16. In the case of a criminal act being committed by the violation of the freedoms or rights guaranteed by the Constitution, criminal proceedings against the perpetrators are mainly instituted ex officio by the competent public prosecutor, while a certain number of criminal proceedings are instituted on the basis of a private complaint by the injured party.

17. If someone's freedoms and rights of man and citizen guaranteed by the Constitution have been violated by a particular act of a judicial or administrative authority or other State agency or legal entity exercising public functions, the person concerned has the right to file a constitutional complaint to the Federal Constitutional Court in the absence of any other legal protection.

18. Apart from the individual whose rights or freedoms have been violated, the constitutional complaint may be lodged on his behalf by an association of citizens or other legal entity which, under its statute, is concerned with the protection of the freedoms and rights of man and citizen before the court.

19. If the Federal Constitutional Court has established that the rights or freedoms guaranteed by the Constitution of the Federal Republic of Yugoslavia have been violated by a particular act of a State agency or other legal entity exercising public functions, it will proclaim null and void that particular act and rule that the consequences thereof be removed. In the case of those rights and freedoms being violated by an action of the said agencies or entities, the Court will ban such actions and order that the consequences thereof be removed.

20. Everyone is entitled to compensation for material or non-material damage suffered as a consequence of unlawful or improper work of an official or a State agency, or by a legal entity exercising public functions. The damage is compensated by the State or legal entity exercising public functions.

21. The right to claim compensation may be exercised by an unjustly convicted person on whom a legally valid sentence has been passed or who has been found guilty, but was acquitted and later, due to an extraordinary legal remedy, new

proceedings have been duly discontinued or the person concerned has been acquitted by a legally valid sentence or the charges against him have been rejected.

22. The right to claim compensation lapses after three years from the date on which the acquittal of the accused person in the first instance became effective or from the date of effect of the sentence whereby the charges were rejected, or from the date of effect of the decision in the first instance whereby the proceedings were discontinued, or from the date of receipt of the decision by a higher-instance court if the petition was decided on by a higher instance court.

23. If the claim for compensation is not accepted or if the administration agency fails to make a decision thereon within three months from the date of the submission of the claim, the claimant may bring an action for the compensation of damage. If partial agreement has been reached on the claim, the claimant may bring an action to get full compensation for the damage sustained.

24. The heirs of the unjustly convicted person are entitled to continue the claim only for the compensation of damage to the property. If the claim for damages has been already made by the unjustly convicted person, the heirs may continue the proceedings only within the bounds of the previously made claim for compensation of damage to the property.

25. After the death of the unjustly convicted person, his heirs may continue the proceedings for the realization of the claim, or may institute proceedings if the unjustly convicted person died before the statutory time-limit and did not renounce the claim.

26. The following persons are also entitled to compensation:

The person who was detained, but against whom no criminal proceedings were instituted, or against whom the proceedings were discontinued by a legally valid decision, or who was acquitted by a legally valid judgement or the charges were rejected;

The person who served a sentence of imprisonment, and who, on the basis of reopened criminal proceedings, of a request for the protection of legality or of a request for the reassessment of a legally valid judgement, was sentenced to a shorter prison term than the one he had already served, or against whom was pronounced a punishment not including the deprivation of liberty, or the person who was found guilty but was later acquitted;

The person deprived of liberty without cause or kept longer in detention or in an institution for serving the sentence or measure due to a mistake or unlawful work of the competent authorities;

The person kept in detention longer than the prison term meted out in the sentence passed on him.

27. If the case concerning the unjustly convicted person or the person deprived of liberty without cause has been reported by the mass media and the reputation of the said person has been harmed, at the request of the wronged person, the court shall announce, in the newspapers or other media, a statement on the decision from which it follows that the conviction was unjust or that the deprivation of liberty was unlawful. If the case went unreported by the mass media, the court will, at the request of the wronged person, forward such a statement to the organ or the organization in which the person concerned is employed, as well as to the social or other organization, if this is necessary for his rehabilitation. After the death of the convicted person, such a request may be addressed by his spouse, children, parents, brothers and sisters.

28. The court of first instance which conducted criminal proceedings will pass an ex officio decision on deleting the unjust conviction from the penal record. The decision is forwarded to the competent organ responsible for maintaining the penal record. The information on the deleted registration from the penal record must not be revealed to anyone.

29. The unjustly convicted person or the person deprived of liberty without cause or who lost job or social insurance, will be recognized the years of service and social insurance as if he were employed during the period of unemployment due to unjust conviction or deprivation of liberty without cause. The period during which the person concerned was unemployed due to unjust conviction or deprivation of liberty without cause is included in his years of service.